IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

I.S. INDUSTRIES, INC., d/b/a SNYDER DOORS	:	CIVIL ACTION
v.	:	
EXPORT-IMPORT BANK OF THE UNITED STATES, et al.	:	NO. 99-CV-3361

MEMORANDUM

Padova, J. **April 12, 2000**

Plaintiff I.S. Industries, Inc., filed the instant action against Defendants Export-Import Bank of the United States and Export Risk Management to recover money allegedly due under an export insurance policy. Before the Court is Defendant Export-Import Bank of the United States' Motion for Summary Judgment. For the following reasons, the Court will grant Defendant's Motion.

I. BACKGROUND

I.S. Industries, Inc., d/b/a/ Snyder Doors ("Snyder Doors"), is a corporation that manufactures, distributes, and exports metal doors. Beginning in 1995, Snyder Doors, through its broker Export Risk Management, procured export insurance with the Export-Import Bank of the United States ("Bank"). This insurance included a Special Buyer Credit Limit that covered sales of

certain goods to Cerkom Spol, SRO, a company located in the Czech Republic ("Cerkom Spol Credit Limit"). Special Buyer Credit Limits are designed to cover the risk of nonpayment by the designated buyer. To obtain a Special Buyer Credit Limit, the insured must submit annually a separate application to the Bank.

Snyder Doors first submitted an application for the Cerkom Spol Credit Limit on June 21, 1995. Plaintiff subsequently submitted renewal applications for the following three years. Each year, the Bank issued an endorsement adding the Cerkom Spol Credit Limit to Plaintiff's policy. The last endorsement for the Cerkom Spol Credit Limit ("Endorsement") contained a term limiting coverage to shipments made on or before August 1, 1998.[1]

On June 11, 1998, the Bank renewed Snyder Doors' primary export insurance policy. Plaintiff received an Index of Endorsements ("Index") that identified the effective period of the export insurance policy as July 1, 1998, to July 1, 1999.[2]

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[1]The Endorsement states as follows:

> A special buyer credit limit is approved for the buyer named above, subject to the following terms and conditions:
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> 3. Final shipment date: This special buyer credit limit shall cover shipments made on or before 8/01/98.

(Def. Exh. K). The Endorsement lists an effective date of July 24, 1997, and states that it is a part of the main insurance policy issued to Plaintiff. Id.

[2]The Table of Contents of the insurance policy issued to Plaintiff contains an Index of Endorsements ("Index"). (Compl.

The Index also lists the endorsements applicable under the policy, including the Cerkom Spol Credit Limit Endorsement. On November 19, 1998, Snyder Doors shipped overhead garage doors and accessories worth $34,410.00, to Cerkom Spol. Although admitting receipt of the goods, Cerkom Spol refused to pay for them. Snyder Doors filed a claim with the Bank under the Cerkom Spol Credit Limit. The Bank to date has paid only $9,500.00, and has refused to pay the remainder on the ground that Snyder Doors had shipped the goods after the Cerkom Spol Credit Limit coverage had expired.

II. LEGAL STANDARD

Summary judgment is appropriate "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." Fed.R.Civ.P. 56(c). An issue is "genuine" if the evidence is such that a reasonable jury could return a verdict for the non-moving party. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986). A factual dispute is "material" if it might affect the outcome of the case under governing law. Id.

A party seeking summary judgment always bears the initial responsibility for informing the district court of the basis for

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Exh. A).

its motion and identifying those portions of the record that it believes demonstrate the absence of a genuine issue of material fact. Celotex Corp. v. Catrett, 477 U.S. 317, 322 (1986). Where the non-moving party bears the burden of proof on a particular issue at trial, the movant's initial Celotex burden can be met simply by "pointing out to the district court that there is an absence of evidence to support the non-moving party's case." Id. at 325. After the moving party has met its initial burden, "the adverse party's response, by affidavits or otherwise as provided in this rule, must set forth specific facts showing that there is a genuine issue for trial." Fed.R.Civ.P. 56(e). That is, summary judgment is appropriate if the non-moving party fails to rebut by making a factual showing "sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial." Celotex, 477 U.S. at 322. Under Rule 56, the Court must view the evidence presented on the motion in the light most favorable to the opposing party. Anderson, 477 U.S. at 255.

III. DISCUSSION

Plaintiff states two claims against the Bank. Count II of the Complaint asserts a cause of action for breach of contact. Count IV alleges a claim for bad faith under 42 Pa. Cons. Stat. Ann. § 8371. The Bank moves for summary judgment on both Counts

II and IV.

A. Count IV - Bad Faith

With respect to Count IV, the Bank asserts the affirmative defense of sovereign immunity. Plaintiff concedes the inappropriateness of Count IV and withdraws that claim. (Pl. Opposition Br. at 9). The Court, therefore, grants Defendant's Motion with respect to Count IV.

B. Count II - Breach of Contract

The Bank argues that the terms of the Endorsement unambiguously restrict coverage to shipments made on or before August 1, 1998. Because the shipment that forms the basis of Plaintiff's claim was made after that date, the Bank contends that is not obligated to pay for Cerkom Spol's default. Plaintiff claims that the insurance policy Index is ambiguous and misleading because it lists the Cerkom Spol Credit Limit along with the effective dates for the policy as a whole, without listing the final shipment date applicable to the Cerkom Spol Credit Limit or specifically referring to any limiting terms in the Endorsement itself.

Under Pennsylvania law, the court first must determine as a matter of law whether the written contract terms are clear or ambiguous.[3] Polish American Machinery Corp. v. R.D.& D Corp.,

[3]Since neither party has raised the issue of choice of law and both parties have cited only Pennsylvania law in their legal memoranda, the Court will apply Pennsylvania law in this case.

760 F.2d 507, 512 (3d Cir. 1985). Where the facts of a contract are not in dispute and the terms of the contact are unambiguous, determining the meaning and legal effect of the contract is purely a question of law that is an appropriate matter for resolution on summary judgment.[4] McMillan v. State Mutual Life Assurance Co. of Am., 922 F.2d 1073, 1074 (3d Cir. 1990); Glenn Distributors Corp. v. Carlisle Plastics, Inc., No. CIV. A. 98-2317, 1999 WL 695873, at *2 (E.D.Pa. Sept. 9, 1999).

A contract is ambiguous if it is "reasonably or fairly susceptible of different constructions and is capable of being understood in more senses than one and is obscure in meaning through indefiniteness of expression or has a double meaning." Samuel Rappaport Family Partnership v. Meridian Bank, 657 A.2d 17, 21-22 (Pa. Super. Ct. 1995)(internal citations omitted). Under this rule, an insurance policy provision is ambiguous if it is reasonably susceptible to more than one interpretation. McMillan, 922 F.2d at 1075. Since courts must construe ambiguous provisions against the insurer, reasonable interpretations of ambiguous provisions in insurance policies that are offered by the insured control. Id. A contract, however, is not ambiguous if the court can determine its meaning based only on its

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See also McMillan v. State Mutual Life Assurance Co. of Am., 922 F.2d 1073, 1074-75 (3d Cir. 1990).

[4]The material facts in this case are undisputed. (See Pl. Br. at 1).

knowledge of the simple facts on which the meaning depends. Rappaport, 657 A.2d at 21-22. Where the language of an insurance contract is unambiguous, the court must enforce the clear meaning of that language. Standard Venetian Blind Co. v. Am. Empire Ins. Co., 469 A.2d 564, 566 (Pa. 1983).

Courts should refrain from "torturing the language of a policy to create ambiguities where none exist." McMillan, 922 F.2d at 1075 (citation omitted). The insurance contract at issue must be read as a whole, not in discrete units. Giancristoforo v. Mission Gas and Oil Products, Inc., 776 F. Supp. 1037, 1041 (E.D.Pa. 1991). In addition, policy terms should be read to avoid ambiguities. General Accident Ins. Co. of Am. v. Safety Nat'l Cas. Corp., 825 F. Supp. 705, 708 (E.D.Pa. 1993). Where the apparent ambiguity of one provision in an insurance policy is resolved by another provision of the contract, no ambiguity exists. Id. A court cannot rewrite the terms of a policy or give them a construction that conflicts with the plain meaning of the policy's language. Id.

Reading the policy and attached endorsements as a whole, the Court finds no ambiguity. The basic insurance policy expires on July 1, 1999, while the Cerkom Spol Credit Limit applies to shipments made on or before August 1, 1998. These two provisions do not conflict, nor are they susceptible to any other reasonable interpretation. Furthermore, the Index clearly advises insureds

to read the actual Endorsement carefully (Compl. Exh. A). Even assuming that the Index by itself was ambiguous, any apparent ambiguity is clarified by the express terms of the Endorsement limiting coverage to shipments after August 1, 1998. See General Accident Ins. Co., 825 F. Supp. at 708.

Having found no ambiguity in the policy, the Court agrees that the Bank was not obligated to recognize Plaintiff's claim for shipments made after August 1, 1998. For this reason, the Court grants summary judgment on Count II in favor of the Bank.

In summary, the Court will enter judgment in favor of Defendant Export-Import Bank of the United States on Counts II and IV. Counts I and III of the Complaint against Export Risk Management will proceed. An appropriate Order follows.

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O R D E R

AND NOW, this day of April, 2000, upon consideration of Defendant Export-Import Bank for Summary Judgment (Doc. No. 12), Plaintiff's Opposition thereto (Doc. No. 14), and Defendant's Reply thereto (Doc. No. 15), **IT IS HEREBY ORDERED** that:

1. Defendant's Motion is **GRANTED**.

2. Judgment in favor of Defendant Export-Import Bank of the United States and against Plaintiff I.S. Industries, Inc., d/b/a Snyder Doors, on Counts II and IV is **ENTERED**.

3. Counts I and III against Defendant Export Risk Management may proceed.

BY THE COURT:

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John R. Padova, J.